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705992—46

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 147

EARL C. GIBBS, INC., PETITIONER

v.

DEFENSE SUPPLIES CORPORATION AND RECONSTRUCTION FINANCE CORPORATION

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINION BELOW

The opinion of the United States Emergency Court of Appeals has not yet been reported in the Federal Reporter, but is included in the Record at pages 48 to 62.

JURISDICTION

The judgment of the Emergency Court of Appeals was entered on May 8, 1946 (R. 62). The petition for certiorari was filed June 6, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended, and Section 204 (d) of the Emergency Price Con-

trol Act of 1942 (50 U. S. C. App. Sec. 924 (d)).

QUESTION PRESENTED

Whether the provisions of Amendment No. 2 to Regulation No. 3 of Defense Supplies Corporation Livestock Slaughter Payments (9 F. R. 1820, R. 27), limiting eligibilty to receive extra compensation at the rate of eighty cents per hundred pounds to unaffiliated slaughterers not owned or controlled by and who do not own or control a processor or purveyor of meat and defining own or control as including the making of loans or advances in excess of five (5) percent of the debtors monthly sales, are lawful.

STATUTES, EXECUTIVE ORDERS, DIRECTIVES AND REGULATION

The pertinent provisions of Section 2 (e) of the Emergency Price Control Act of 1942, Section 2 of Public Law 88, 79th Congress, the pertinent provisions of Executive Order 9250 (7 F. R. 7871), the directive of October 25, 1943 of the office of Economic Stabilization (8 F. R. 14641), and Amendment No. 2 to Regulation No. 3 of Defense Supplies Corporation (9 F. R. 1820) appear in the Appendix to the brief in opposition in *Atlantic Meat Co.* v. *Reconstruction Finance Corporation,* No. 154.

STATEMENT

In June 1943, as part of the President's hold-the-line policy (E. O. 9328, 8 F. R. 4681), the maximum prices of carcass beef and wholesale cuts

of beef, were by order of the Economic Stabilization Director, reduced approximately ten (10) percent (Amendment No. 15 to RMPR 169, 8 F. R. 7675). This reduction was compensated for by subsidy payments made by Defense Supplies Corporation (later Reconstruction Finance Corporation) under its Regulation No. 3 (8 F. R. 10826).

The Director of Economic Stabilization, by his directive of October 25, 1943 (8 F. R. 14641) provided for an additional subsidy of eighty cents per cwt. to nonprocessing slaughterers of beef. The directive of October 25, 1943 was implemented by Defense Supplies Corporation's Amendment No. 2 to Regulation No. 3 (9 F. R. 1820). Amendment No. 2 required that to be eligible for the special subsidy of eighty cents per cwt., the applicant must be an unaffiliated, nonprocessing slaughterer; that is, it must not "own or control" or "be owned or controlled by" a "processor or purveyor of meat." The amendment defines the phrase "own or control" as meaning "to own or control directly or indirectly a partnership equity or in excess of ten percent of any class of outstanding stock or to have made loans or advances in excess of five percent of the other person's monthly sales."

Petitioner demanded payment under Amendment No. 2 of $218,865.12, claimed to be due for slaughter during the period November 1, 1943 to and including October 31, 1944 and $22,120.56 for slaughter during November 1944 (R. 6, 7). There

is no controversy with respect to the payment of the basic meat subsidy under Regulation No. 3.

The claim was denied because petitioner, from November 1, 1943 to and including November 30, 1944, was indebted to a processor or purveyor of meat in an amount in excess of five (5) percent of petitioner's monthly sales (R. 15–16). The indebtedness was equal to approximately 37½ percent of the monthly sales (R. 33). Petitioner then brought suit in the United States Emergency Court of Appeals which dismissed the Complaint for reasons stated in its Opinion (R. 48–62).

On May 9, 1946, the Office of Price Administration granted relief to petitioner in the sum of $218,865.12, pursuant to the provisions of Public Law 88, 79th Congress, 1st Session, leaving $22,120.56, claimed for slaughter during November 1944, unpaid and in issue (R. 64–68).

ARGUMENT

Petitioner seeks a review upon the grounds that the Emergency Court of Appeals erred in ruling that the provisions of the subsidy regulation, limiting eligibility to receive the extra subsidy to applicants who were debtors or creditors to processors or purveyors of meat in a prescribed amount, without affording the subsidy applicant an opportunity to show that such indebtedness does not in fact constitute a means of control, were unlawful.

Petitioner argues that the subsidy regulation creates an unlawful conclusive presumption in

fact. The regulation does not create a presumption, conclusive or otherwise, but rather by definition states substantive requirements for eligibility. A statute or regulation may contain its own definitions, and such definitions will be binding in so far as the meaning of the statute or regulation is concerned. See *Fox* v. *Standard Oil Co.*, 294 U. S. 87, 95–96. And even if the regulation be viewed as creating a conclusive presumption it would not be invalid since a conclusive presumption is unlawful only if the substantive result for which it provides cannot lawfully be reached. The petitioner has cited *Heiner* v. *Donnan*, 285 U. S. 312, and *Schlesinger* v. *Wisconsin*, 270 U. S. 230, in support of his contention that the subsidy regulation creates an illegal presumption of fact. The cited cases dealt with tax statutes which created conclusive presumptions that gifts within a stated period before death were gifts in contemplation of death and provided for the taxing of such gifts as a part of the decedent's estate. In each of the two cases the court noted that the taxes in question were of a character which it thought would be illegal if imposed upon gifts *inter vivos*, and held that a tax of a character which could not be directly levied could not be indirectly effected through the device of conclusive presumptions.

Petitioner also assails the reasonableness of the regulation. Obviously, a non-processing slaughtering corporation wholly owned by and inte-

grated with a processor and retail distributor of meat was not intended to be a beneficiary of the extra subsidy. From such clear cases the degree of affiliation and integration of non-processing slaughterers with other elements of the meat industry gradually declines. At some point it was necessary to fix by definition in the subsidy regulation a precise line of demarcation between the eligible and non-eligible slaughterers. The benefits of integration between non-processing slaughterers and others in the meat business can be enjoyed, in whole or in part, by persons in control whether the control is based upon stock ownership or upon a dominating position as a creditor. Members of the meat industry are not bankers by trade, and credits extended by them to each other can reasonably be assumed to involve in most cases purposes other than the earning of interest. The packing industry is characterized by a rapid turn-over of capital, and debts of slaughterers of a substantial size as compared to sales are apt to be sufficiently burdensome to offer to the creditor a potential means of control. The limitation of the subsidy regulation on intra-industry debts was devised to meet this situation.

Granting for the purpose of argument that a debt in excess of five percent of monthly sales does not necessarily carry with it actual control, the limitation must nevertheless be deemed reasonable. If the disqualifying debt is so great that it cannot be refinanced outside the meat in-

dustry or be reduced below the permitted maximum the probability of control by the creditor is great. On the other hand, if the financial position of the debtor is such that the disqualifying debt is not unduly burdensome and does not create control, the debt in some cases may be reduced sufficiently or it may be refinanced outside the meat industry, as was ultimately done by petitioner in this case. A slaughterer disqualified from receiving the extra subsidy because of debts may in proper cases have generous relief under Section 2 of Public Law 88, as has been given to the petitioner here (see Pet. p. 7).

The difficulty of factually determining the existence of control by a creditor raises a problem, not merely of "administrative convenience" as petitioner asserts, but rather one of administrative possibility. Control by a creditor will depend upon his ability to exert economic pressure rather than upon terms of the loan contract, and a self-serving claim by a subsidy applicant of absence of control by a creditor would not be easily susceptible of disproof. Neither Defense Supplies Corporation nor the Reconstruction Finance Corporation has been given the power to subpoena witnesses, to compel the production of documents or to administer oaths. In the absence of such powers adequate protection of the Government from improper subsidy claims required the establishment of conditions for eligibility requiring no factual findings excepting

perhaps such as can be made through routine inspections by auditors or examiners.

CONCLUSION

The decision of the court below is correct and there is no conflict of decision. No question of public importance is involved. The present meat subsidy program has been terminated by the expiration of the Emergency Price Control Act, and although in certain circumstances a new program may be reestablished after August 20, 1946,[1] the issue is not likely to arise except for claims already accrued. The petitioner and others similarly situated were afforded a generous measure of relief under the provisions of Section 2 of Public 88. It is respectfully submitted that the petition should be denied.

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AUGUST, 1946.

[1] See Price Control Extension Act of 1946 (Pub. L. 548, 79th Cong., 2d Sess., approved July 25, 1946), sections 3, 6, 18.

U. S. GOVERNMENT PRINTING OFFICE: 1946